No. 93-5

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHNNY H. WATERS, ET AL.

Plaintiffs/Appellants/Petitioners

v.

STATE OF ALABAMA

THE UNIVERSITY OF ALABAMA BIRMINGHAM MEDICAL CENTER, UNIVERSITY OF ALABAMA HOSPITALS, ET AL.

Defendants/Appellees/Respondents

PETITION FOR WRIT FOR CERTIORARI FROM U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORAL ARGUMENT REQUESTED

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QUESTIONS PRESENTED

I. Whether Jeanne Carol Waters constitutional right to live and due process under the 5th and 14th Amendments to the U.S. Constitution were violated when a resident doctor, who had performed the same operation two times on patient/petitioner, and had her life support systems removed when he had no authorization from UAB Hospital or a court order after the patient/petitioner had been given drug Pavulon to induce unconsciousness?

II. Whether the civil rights [42 U.S.C. § 1983] were violated because of the constitutional rights of Jeanne Carol Waters were violated [5th and 14th Amendments to the U.S. Consitution and question of whether under 2-year or the 6-year statute of limitations because of trespass on the person as seen in the Alabama case [Beard v. Stevens, 372 F. 2d 685, (1987)] because Jeanne Carol Waters was assaulted and trespassed on her person by the

QUESTIONS PRESENTED (CONTINUED)

unauthorized pulling of her life support systems by resident doctors [doctors in training when she had been induced to be unconscious by a drug, Pavulon, causing her die [she lived approximately 2 hours after pulling life support system indicating she was not brain dead]

after she had been induced to be unconscious by a drug, Pavulon, causing her to die?

III. Whether a hospital can bury their mistakes and wrong doings by their agents, resident doctors [doctors in training] with legal technicalities that infringe upon the U.S. Constitutional rights of Jeanne Carol Waters by violating her civil rights when she had a right to live under the 5th and 14th Amendments to U.S. Constitution.

IV. Whether the instant case concerning the constitutional right to live is a first impression case and the Supreme Court of the United States has jurisdiction of the case and

QUESTIONS PRESENTED (CONTINUED)

can consider the merits of the case and rule as to the length of time this type of civil rights violation led to the premature and wrongful death of Jeanne Carol Waters, i.e. whether the 2-year statute or 6 year statute of limitations is applicable and when there is a life threatening civil rights violation whether this is a trespass on the person and comes under the 6-year statute of limitation or whether a procedural state law on statute of limitations can infringe on constitutional rights of the 5th and 14th amendments to the U.S. Constitution when the right to live and due process in the courts has been violated?

V. Whether the State of Alabama in failing to repsond to the state law on sovereign immunity exception of injury to the person being challenged should be considered as default and the instant case should be reversed and remanded because the State law

QUESTIONS PRESENTED (CONTINUED)

was challenged, and when a state law on sovereign immunity (in this case excception to sovereign immunity because of trespass on person, impinges on the constitutional right to live under the 5th and 14th Amendments to U.S. Constitution then then the federal should prevail?

PARTIES TO THE PROCEEDING

The Plaintiffs/Appellants/Petitioners are: Johnny H. Waters, Joseph H. Waters, and Jeanne Carol Waters.

The Defendants/Appellees/Repondents are: State of Alabama; The University of Alabama Birmingham Medical Center, University of Alabama Hospitals, Dr. Stephen Hipp, Dr. Peggy Austin-Vives, and Dr. L. Clark Taylor.

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

CITATIONS OF AUTHORITY

Bantam Books Inc. v. Sullivan, R.I., 1963,
83 S Ct 631, 372 U.S.58, 9 L. Ed 2d 584 1

Beard v. Stevens,
372 F. 2d 685 (1987) 7,11,1
11,19,2

Hickman v. Dothan City Bd. of Educ.
421 So. 2d 1257 (Ala. 1982) 2

Horwitt v. Horwitt, D.C. Conn. 1950,
90 F. Supp. 529 2

Jones v. Alabama State Docks,
443 So. 2d 902 (Ala. 1983) 2

Jones v. Preuit & Mauldin,
876 F. 2d 1480 (11th Cir. 1989) ... 7,11,1

Monell v. New York City Dept. of Soc. Serv.
436 U.S. 658, 56 L. Ed 2d 611,
98 S. Ct 2018 14,2

Owens and Lessard v. Okure
57 LW 4065 at 4069 7,11,1
15,17,1

Standard Oil Co. v. Graves, Wash. 1919,
49 S Ct 320, 249 U.S. 389, 63 L. Ed. 662 ..1

Velger v. Cawley,
525 F. 2d 334 (2nd Cir. 1975) 2

BEST AVAIL

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHNNY H. WATERS, ET AL.

Plaintiffs/Appellants/Petitioners

v.

STATE OF ALABAMA

THE UNIVERSITY OF ALABAMA BIRMINGHAM

MEDICAL CENTER, UNIVERSITY OF ALABAMA

HOSPITALS, ET AL.

Defendants/Appellees/Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

THE SUPREME COURT OF ALABAMA

OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

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JURISDICTION

Reversal and review is sought from the final decision of the U.S. Court of Appeals Eleventh Circuit, and from the Supreme Cour of Alabama, the highest court in Alabama wh originally denied the appeal. Jurisdiction invoked under 28 U.S.C. § 1254 as Writ.

Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The original case was timely filed on Jan. 2, 1991, when the Complaint was filed with Exhibits (Vol. I, p. 1-25).

On March 11, 1991, the Plaintiffs attorney filed three volumes of medical records from the University of Alabama Hospitals, and other medical records (Vol. I, p. 52 through Vol. IV, p. 701, including autopsy reports.)

Threshold issue is on the DeStafney exception on person injury applies [DeStafney v. University of Alabama, 413 So. 2d 1281 (Ala. 1981)],

and the instant case should be reversed and remanded to Jefferson County where the personal injury took place before the wrongful death of Jeanne Carol Waters which is the subject of this appeal. Jeanne Carol Waters died in Jefferson County Alabama [See Certificate of death, dated April 2, 1989, in Jefferson County, Alabama, Vol. III, p. 570].

The federal case was filed to challenge the procedural law of sovereign immunity blocking the due process in the state, as well as filing a civil rights violation of Jeanne Carol Waters rights under the 5th and 14th Amendments of the right to live under the U.S. Constitution since her life was taken when the life support systems were pulled by the same resident doctor who had to performed the same operation two times at the UAB Hospital in Birmingham, Alabama.

The Petitioner points out the inconsistency of the law, especially on **trespass of the person** which is applicable in the instant case.

Jeanne Carol Waters was transferred from a Selma Hospital by air transport and Dr. Hipp performed an operation on her head and Dr. Hipp failed to use proper surgical technique and he failed to use peri-operative antibodies and she developed Staphyloccocus aureus and Dr. Hipp had to perform the same operation the second time. The point is that Dr. Hipp, a resident doctor [doctor in training] failed to contact his superior, a staff doctor at the hospital, and pulled the life support systems of Jeanne Carol Waters when she was not yet brain dead, and Dr. Hipp pulled the life support systems from Jeanne Carol Waters without authorization from the hospital, family or court order, which was the proximate cause of the premature and wrongful death of Jeanne Carol Waters. She had given normal birth to Joseph H. Waters, three months before she died.

Jeanne Carol Waters who had been induced to be unconscious with the drug Pavulon was unable to give permission to have her life support systems removed. In fact, Jeanne Carol Waters

was clearly assaulted and her person trespassed upon when the resident doctor without authorization from the hopsital, family or court order pulled the life support systems off Jeanne Carol Waters who had been induced to be unconscious and lived approximately 2 hours before she died showing she was not brain dead.

The Petitioner incorporates all statements in the "Statement of the Facts" into this section of the Brief.

STATEMENT OF THE FACTS

The Petitioner, Jeanne Carol Waters, had a right to live under the 5th and 14th Amendments to the U.S. Constitution, and when the resident doctors, Dr. Hipp and Dr. Austin-Vives pull the life support systems at UAB Hospital in Birmingham, without any authorization from the hospital or court order, the civil rights of Jeanne Carol Waters was violated under the 42 U.S.C. § 1983, especially since Jeanne Carol Waters had been induced to be unconsicious with the drug Pavulon.

See **Beard v. Stevens,** 372 F. 2d 685 (1987), which states, "Alabama six-year statute applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations..."

This law in Beard case supra is in direct conflict with Owens v. Okure, 488 U.S. 235 (1988); Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989); and Code of Alabama § 6-2-38(1) (Supp. 1992), 2-year statute of limitations where state law infringes upon the constitutional rights of Jeanne Carol Waters, right to live and due process under the 5th and 14th Amendments to the U.S. Constitution which triggers in the 42 U.S.C. § 1983 civil rights claim.

The Petitioner is respectively asking this Honorable court to review the Owens v.Okure supra case with the Beard v. Stevens case and determine if the trespass on the person applies in the instant case because Jeanne Carol Waters

was not brain dead when the life support systems were removed because she breathed on her own for approximately two hours. If she had been brain dead she would have died instantly when the life support systems were removed. The hospital records that were sent in discovery failed to show that Jeanne Carol Waters was brain dead since the hospital sent EKG records [heart records] insead of EEG records [brain records which have never been seen in any record below].

In the state case below the state was claiming sovereign immunity when there is an exception for personal injury under the De Stafney v. University of Alabama, 413 So. 2d 391 (Ala. 1981) at 395 which states,

"Section 14 does not necessarily immunize State officers or agents from individual civil liability."

The DeStafney case at p. 396 states,

... we find that no valid public policy will be served by immunizing from liability a public employee whose tortious conduct results in personal injury to another."

The state law concerning sovereign immunity pursuant to Ala. Const. Art. I, § XIV (1901), was challeged when the State of Alabama was sued in the federal court, U.S. District Court, Middle District of Alabama, and appealed to the U.S. Court of Appeals, Eleventh Circuit, and now written as a Writ of Certiorari to the Supreme Court of the United States.

The state of Alabama has conflicting law as to whether the two-year statute of limitations or six-year statute of limitations applies in the instant case because clearly Jeanne Carol Waters was trespassed on her person because she had been induced to be unconscious by the drug, Pavulon, before the life support systems were illegally pulled, i.e. Jeanne Carol Waters was assaulted when the life support systems were pulled by a resident doctor [doctor in training who had performed the **same operation** two times] and an employee **of the University of Alabama Hospitals, Birmingham... and the resident doctor was reponsible**

for the personal injury and wrongful death of Jeanne Carol Waters due to the resident doctor negligence and breach of acceptable standards of practice by pulling life support systems without any valid medical or legal reason and therefore the medical services were below standards in the community due to the UAB Hospital agents, servants and/or employees, including the negligence in the hiring by Dr. L. Clark Taylor, Jr.

It appears that the taking of the life by the hospital's agent, resident doctor, Dr. Hipp, who was in training, that caused Jeanne Carol Waters constitutional right to life under the 5th and 14th Amendment to the U.S. Constitution has been ignored by both state and federal courts below by the state court alleging a defense of sovereign immunity which was challenged in the federal court, and by the federal court alleging technicalities which was explained in the oral argument, i.e. there are two conflicting statutes of limitations law in the

state of Alabama concerning civil rights. The two-year statute and the six-year statute. The case Owens v. Okure, 488 U.S. 235 (1988) and Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989), and Code of Alabama § 6-2-38(1) (Supp. 1992), should be re-evaluated with Beard v. Stevens, 372 F. 2d 685 (1987) which applied the Alabama six-year statute which was applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations. The instant case is similar to the Beard v. Stevens case because Jeanne Carol Waters lived approximately 2 hours after her life support systems had been removed by resident doctor without authorization from the hospital or court order, and Jeanne Carol Waters had been given the drug Pavulon to make her unconscious.

The point is this case is now a case where state and federal legal technicalities are causing and infringing upon the constitutional right of Jeanne Carol Waters' right

to life under the 5th and 14th Amendments to the U.S. Constitution, and therefore, under federal law such as Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 249 U.S. 389, 63 L. Ed. 662, the federal constitutional rights should prevail.

The Writ of Certiorari should be granted and a merits brief allowed to be written, and then the instant case should be reversed and remanded with instructions on constitutional law to the trial court to be tried by a jury on all triable issues in the instant case.

The Owens v.Okure case supra and quoted in this Brief p.15 in Alabama is inconsiatent with the trespass on the person 6-year statute in Beard case supra and quoted in this Brief p.14 and especially since the Owens v. Okure case stands for the fact federal law can override certain state law. The Honorable Supreme Court of the United States should re-interpret this Owens v. Okure case as to the exception of trespass on the person, wrongful death, and/ or MURDER I, when life support systems are

pulled by resident doctor, who was not authorized by the hospital, court order or consent of the family. The point is that the same resident doctor, Dr. Hipp, pulled the life support systems that had to perform the same operation a second time on Jeanne Carol Waters because his first operation was performed in a substandard manner.

Damages were also to the family by the resident doctor having perform the same operation two times, because her husband, Johnny Waters, had to obtain different insurance and the price of the insurance subtantially increased because of the insurance that had to be paid for the hospital treatment and wrongful death of his wife, Jeanne Carol Waters. In obtaining new insurance, the husband had to wait for two years for certain types of coverage.

The Writ of Certiorari should be granted.

REASONS FOR WRIT OF CERTIORARI

QUESTIONS I,II, AND III discussed this sectio of Writ, showing violation of due process unde 5th and 14th Amendments and civil rights.

The Appellant points out the inconsistency of the law, especially on trespass of the person which is applicable in the instant case.

See **Beard v. Stevens**, 372 F. 2d 685 (1987), which states, "Alabama six-year statute applicable to trepass applied to action against sheriff and deputies for alleged civil rights violations..."

This law in Beard case is in direct conflict with Owens v. Okure, 488 U.S. 235 (1988); Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989); and Code of Alabama, § 6-2-38(1) (Supp. 1992), state law infringes upon the constitutional rights of Jeanne Carol Waters, righ to live and due process under the 5th and 14th Amendments to the U.S. Constitution which triggers in the 42 U.S.C. § 1983 civil rights clain Monell v. New York City Dept. of Soc. Serv. 436 U.S. 658, 56 L. Ed 2d 611, 98 S. Ct 2018,

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which states,

"Civil Rights § 12.5 -- Liability for violations -- state law immunities - 11a, 11b. State-law immunities do not override a cause of action under 42 U.S.C. § 1983, which imposes civil liability on any person who deprives another of the federally protected rights."

See Owens and Lessard v. Okure, 57 LW 4065 at 4069 which states,

"We explained that the Civil Rights Acts provided: "[a] unique remedy making it appropriate to accord the statute a sweep as broad as its language.' Because the § 1983 remedy is one that can 'override certain kinds of state laws.' Monroe v. Pape, 365, U.S. 167, 173, (1961), and is in all events, supplementary to any remedy any State might have..."

Also see Bantam Books, Inc. v. Sullivan, R.I., 1963, 83 S Ct 631, 372 U.S. 58, 9 L. Ed 2d 584, which states,

"The Supreme Court's appellate jurisdiction was properly invoked, where the state court judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution."

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See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

In the instant case, the same person, Dr. Hipp [Resident doctor] who had to operate on Jeanne Carol Waters two times for the same type of operation, induced unconsciousness by drug, Pavulon, and then he pulled the life support systems of Jeanne Carol Waters [not talking about allegedly pulled life support systems but actually pulled life systems and he signed his name in medical record of UAB] which was called wrongful death in this case but was actually **MURDER I** to cover his mistakes of having to operate two (2) times on Jeanne Carol Waters.

Jeanne Carol Waters was not brain dead but induced to be unconscious by drug, Pavulon, and she breathed from 9:20 A.M. to 11:00 A.M. on her own showing she was not brain dead after the unauthorized removal of her life support systems.

The UAB hospital tried to cover the death incident by producing heart record, EKG's, instead of EEG's and certainly Jeanne Carol Waters had a right to live under the 5th and 14th Amendments to the U.S. Constitution, and has not received due process in the judicial system with the Owens v. Okure, supra case.

The Owens v. Okure case supra, in Alabama is inconsistent with the trespass on the person 6-year statute in Beard case, quoted above, and especially since the Owens v. Okure case stands for the fact federal law can override certain state law. The Honorable Supreme Court of the United States should reinterpret this Owens v. Okure, as to the exception of trespass on the person, wrongful death, and/or MURDER I, when

life support systems are pulled by resident doctor who was not authorized by the hospital, court order, or consent of the family.

There is a question whether wrongful death and/or trespass on the person (assault), and/or MURDER I, can toll the time of any statute of limitations when the patient, Jeanne carol Waters, was unconscious by drug induced Pavulon, and she could not give her consent.

There is no doubt about if if the 2-year statute of limitations is allowed to stand, then, state law technicality is infringing on federal law, the right to live of Jeanne Carol Waters, under the 5th and 14th Amendments to U.S. Constitution, which triggers in the 42 U.S.C. § 1983. The question is does the 2-year statute of limitations apply to direct violations of the Constitution of the United States, 5th and 14th Amendments as to right to live and due process lacking in the court system.

The Honorable Supreme Court of the United States may need to deterimine if there is any conflict of law in this case, and whether exceptio

and redefine **Owens v. Okure supra,** if the conflict of state law in Alabama has more than one statute of limitations on civil rights [See Beard case supra] especially when trespass on the person, wrongful death and/or MURDER I, where a hospital is trying to bury the mistake of allowing a resident doctor to operate two times on same patient for same thing and same doctor pulls life support system and Jeanne Carol Waters dies.

QUESTION IV. discussed in this section concerns exception to sovereign immunity.

The state case was timely filed within two-year statute, and further this case was also challenging the state law concerning sovereign immunity, and the state of Alabama failed to properly answer to sovereign immunity law, which was challeged in this instant case as to whether alleged sovereign immunity was infringing on federal law when state had an exception for personal injury as seen in the DeStafney case.

See DeStafney v. University of Alabama, 413

So. 2d 391 (Ala. 1981), at 395, which states,

"Section 14 does not necessarily immunize S officers or agents from individual civil liability."

The DeStafney case at p. 396 states,

"We find that no valid public policy will served by immunizing from liability a public employee whose tortious conduct results in perosnal injury to another."

Concerning dismissal on the grounds of sovereign immunity pursuant to Ala. Const. I § XIV (1901), the Plaintiff is not sueing th state direct but the employees of the University of Alabama Hospitals, Birmingham... responsible for person injury and wrongful death of Jeanne Carol Waters due to negligently breach of acceptable standards of practice in providing such medical services in that Defendants' agents, servants and/or employees, including the negligence in the hiring by Dr. L. Clark Taylor, Jr.

See Hickman v. Dothan City Bd. of Educ. 421 So. 2d 1257, at 1258 (Ala. 1982), which states,

"Alleged negligent conduct of a state employee, even when committed in line and scope of employment, is not within protection of constitutional provision governing sovereign immunity. Const. § 14."

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

See DeStafney v. University of Alabama, 413 So. 2d 391, at 395 which states,

"Clearly, under the guidelines of Gill and Milton, a claim for personal injury based upon the alleged negligent conduct of a State employee, even when committed in the line and scope of employment, is not within the ambit of § 14's protection.

Clearly, the Honorable trial judge made reversible error when the violation of Jeanne Carol Waters due process rights to live under the 5th and 14th Amendments to the U.S. Constitution, and he due process rights to be in the courts under the personal injury [trespass on the person], exception to the sovereign immunity of a state.

DeStafney Exception on Personal Injury applies to sovereign immunity defense of stat hospital, University of Alabama Hospitals, ir Birmingham, and its agents, Dr. Taylor, Administrator, and its agents as resident doctors, Dr. Hipp and Dr. Vives-Austin because the Honorable trial court judge made reversible error and was plainly and palpably wrong and unjust in his order.

The state of Alabama itself was sued in thi federal case as seen in the Complaint [Vol. 1 p. 1] for interpretation of law where a state is infringing on the constitutional rights of an individual's right to live under the 5th and 14th amendments to the U.S. Constitution.

These constitutional violations trigger the 42 U.S.C. § 1983, and in the instant case, the 6-year statute of limitations is applicable because of trespass on person - See Beard v. Stevens, 372 F. 2d 685 (1987).

There is a conflict as stated above as to whether the 2-year or 6-year statute of limitations applies to violation of civil rights under 42 U.S.C. § 1983 because of the personal injury of the resident doctors [doctors in training] pulling the life support systemes of Jeanne Carol Waters resulting in her wrongful death [MURDER I - since one of the resident doctors had to perform the same operation twice on Jeanne Carol Waters] and the unauthorized pulling of life support systems when Jeanne Carol Waters was not brain dead, but had been induced in a comatose condition at the UAB Hospital in Birmingham by the drug Pavulon [See medical records which are part of the Record, Vol. I, NR 19] should clearly come under trespass on the person

under the Beard v. Stevens, 372 F. 2d 685 (1987), which states,

"Alabama six-year statute applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations..."

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process. There was no notice or hearing to pull the life support system of Jeanne Carol Waters [violatio of her due process rights under the 5th and 14th amendments to U.S. Constitution, right to live], when the resident doctor had to perform the same operation two times on Jeanne Carol Waters and he decided to pull the life support systems without authorization from the hospital or any court, and she died a wrongful death. Secondly, the due process rights under the 5th and 14th Amendments to the U.S. Constitutional right to live comes under the failure of the state

court to recognize own law as to the exception to state immunity as to person injury when is met in the DeStafney case supra above exception. The third due process rights of Jeanne Carol Waters is violated when the 6-year statute of limitations as to trespass on the person was not observed as stated in the Beard case supra.

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

University of Alabama Hospital agents, resident doctors, violating the 5th and 14th amendments to the U.S. Constitution and triggered 42 U.S.C. § 1983 as to 3½ months old of Jeanne carol Waters that was wrongfully deprived of his mother and there is no immunity for the University of Alabama Hospitals as shown in Monell v. New York City Dept. of Soc. Serv., 436 U.S. 658, 56 L. Ed 2d 611,

98 S. Ct 2018, which states,

"Civil Rights § 12.5 -- liability for vi
lations -- state law immunities - 11a,11b.
State-law immunities do not override a cau
of action under 42 U.S.C. § 1983, which im
poses civil liability on any person who de
prives another of his federally protected
rights."

CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

Julia Asam

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above was went to Hon. Jimmy Evans, Attorney General, State of Alabama, Montgomery, Alabama 36101, Mr. Robert D. Norman, Norman, Fitzpatrick et al, 1800 City Federal Building, Birmigham, Ala. 35203, and Mr. H.M. Trechsel, Office of Counsel, University of Alabama System, UAB Station, MJH, 112, Birmingham, Alabama 35294-2010 this 7 day of June 1993.

Julia Asam

APPENDIX I

IN THE SUPREME COURT OF ALABAMA

October Term, 1991-92

1901222

Johnny H. Waters, et al.

v.

University of Alabama Hospitals, et al.

Appeal from Jefferson Circuit Court

(CV-91-014)

KENNEDY, JUSTICE. October 18, 1991

Johnny and Joseph Waters filed a wrongful death action against the University of Alabama Board of Trustees; the University of Alabama at Birmingham; the University of Alabama Hospitals; Dr. Charles McCallum, president of the University of Alabama at Birmingham; and Dr. L. Clark Taylor, Jr., administrator of the University of Alabama Hospitals. The action also named other defendants who are not involved in this appeal. The trial court dismissed the defendants named above and

made that judgment final pursuant to Rule 54(b), A.R.Civ.P.

The Waterses' notice of appeal indicated that they appeal only the judgment for the University of Alabama Hospitals; it does not provide any notice of appeal from the judgment for the other defendants in whose favor the judgment was entered. However, in their brief, the plaintiffs argue against the judgment for the University of Alabama Board of Trustees, Dr. McCallum, and Dr. Taylor.

The plaintiffs present no cognizable argument [**issue exception of sovereign immunity ignored* see Application for Rehearing and Brief for response to this opinion**] against the University of Alabama Hospitals. Accordingly, the plaintiffs present only arguments against the judgment for those parties concerning whom they filed no notice of appeal, and they present no arguments

on the judgment for the party concerning whom they filed a notice of appeal. We will not address arguments concerning a judgment not appealed from; furthermore, "when the appellant fails to invite the appellate court's review of any issues raised from the court below, the trial court's judgment is due to be affirmed." Wilger v. James, 431 So. 2d 1166 (Ala. 1983).

AFFIRMED.

Hornsby, C.J., and Maddox, Shores, and Houston, JJ., concur.

***Because issue on sovereign immunity exception was ignored, the federal case that was appealed from in the U.S. Court of Appeals, Eleventh Circuit was filed and now before the Honorable Supreme Court of the United States as a Writ of Certiorari.**

APPENDIX II

IN THE SUPREME COURT OF ALABAMA

1901222

Johnny H. Waters, et al.

v.

University of Alabama Hospitals, et al.

Appeal from Jefferson Circuit Court

(CV-91-014)

Application for rehearing overruled. No opinion written on rehearing. Per Curiam Hornsby, CJ., Maddox, Shores, Houston and Kennedy, JJ., concur.

December 13, 1991.

APPENDIX III

In the U.S. District Court,

Middle District of Alabama

92-A-0065-N March 11, 1992

Motion to Dismiss granted.

Hon. Judge Albritton

APPENDIX IV

IN THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92-6283

D.C. Docket No. 92-A-65-N

JOHNNY H. WATERS AND JOSEPH HUGH WATERS (Minor, and next of kin, Johnny H. Waters, Father), and ON BEHALF OF JEANNE CAROL WATERS, DECEASED,

Plaintiffs-Appellants,

versus

STATE OF ALABAMA: THE UNIVERSITY OF ALABAMA BIRMINGHAM MEDICAL CENTER: UNIVERSITY OF ALABAMA HOSPITALS: DR. CHARLES McCALLUM: DR. L. CLARK TAYLOR, JR., ADMINISTRATOR: DR. STEPHAN HIPP: AND DR. PEGGY VIVES-AUSTIN: FICTITIOUS DEFENDANTS 1-10,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Alabama

February 16, 1993

Before FAY AND KRAVITCH, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM:

AFFIRMED. See Owens v. Okure, 488 U.S. 23 (1989); Jones v. Preuit & Mauldin, 876 F. 2 1480 (11th Cir. 1989); and Code of Alabama § 6-2-38(1) (Supp. 1992).

APPENDIX V

IN THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92-6283

JOHNNY H. WATERS, ET AL.

Plaintiffs/Appellants

v.

STATE OF ALABAMA, ET AL.

Defendants/Appellees

On Appeal from the U.S. District Court for the Middle District of Alabama

ON PETITION FOR REHEARING

BEFORE: Fay and Kravitch, Circuit Judges, a RONEY, Senior Circuit Judge.

PER CURIAM:

The petition for rehearing filed by appellant Johnny H. Waters, et al. is denied.

Entered March 12, 1993.

FILED
JUL 22 1993
OFFICE OF THE CLERK

(2)

No. 93-5

IN THE

Supreme Court Of The United States

October Term, 1993

JOHNNY H. WATERS, *et al.*,
Petitioners

v.

STATE OF ALABAMA, *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Counsel of Record

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QUESTIONS PRESENTED

1. The only question presented in the appeal to the Eleventh Circuit Court of Appeals was whether the Judge of the United States District Court for the Middle District of Alabama, Southern Division, ruled correctly in dismissing plaintiff's claims under 42 U.S.C.S. § 1983 (1986) with prejudice, on the basis that all claims under 42 U.S.C.S. § 1983 (1986) were barred by the statute of limitations.

The five questions set out in the petition filed in this Court were not and never have been issues on appeal to the Eleventh Circuit Court of Appeals. No factual evidence was received or considered in the ruling and the allegations of medical malpractice by either Dr. Hipp or Dr. Vives-Austin are mere delusions. No constitutional issues were raised or considered.

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488 U.S. 235 (1989) 4

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Ala. Code § 6-2-38*(l)* (Supp. 1992) 2, 3

JURISDICTION

The Petition for Rehearing in the Eleventh Circuit was denied on March 12, 1993. This Petition for Writ of Certiorari could only be timely as to the judgment in the Eleventh Circuit. Petitioner seeks to invoke jurisdiction as to a judgment of the Supreme Court of Alabama entered on December 13, 1991. Obviously the petition is not timely filed as to the state court decision.

STATEMENT OF THE CASE

The recitation of facts presented by petitioners is inaccurate and unacceptable as to Dr. Steven Hipp and Dr. Peggy Vives-Austin.

The case filed in the United States District Court for the Middle District of Alabama, Southern Division, was filed on January 14, 1992. All events alleged in the cause of action occurred prior to April 2, 1989. The judge of the District Court issued an order on March 11, 1992, granting defendants' motions to dismiss and dismissing plaintiffs' claim under 42 U.S.C.S. § 1983 (1986), with prejudice. The remainder of plaintiffs' complaint was dismissed without prejudice for lack of subject matter jurisdiction.

The only 42 U.S.C.S. § 1983 (1986) charge against these respondents in the complaint filed in U.S. District Court was contained in Count I which alleged that these defendants violated the right of Jeanne Carol Waters to live "by pulling, without authorization, the life support systems of Jeanne Carol Waters" on April 2, 1989, thereby causing her death on this date. With the complaint not being filed until January 14, 1992, it was apparent on the face of the complaint that the applicable two year statute of limitations had expired long before suit was filed.

SUMMARY OF THE ARGUMENT

Petitioners complained that on April 2, 1989, respondents, Dr. Steven Hipp and Dr. Peggy Vives-Austin, violated the civil rights of Jeanne Carol Waters to live. Suit for the alleged wrong was not filed until January 14, 1992. The Eleventh Circuit Court of Appeals upheld the decision of the district judge that the two year statute of limitations period of Ala. Code § 6-2-38*(l)* (Supp. 1992), applies to all actions under 42 U.S.C.S. § 1983 (1986). Thus, it appears on the face of the complaint that the cause of action against these respondents was barred by the statute of limitations.

No. 93-5

IN THE

Supreme Court Of The United States

October Term, 1993

JOHNNY H. WATERS, *et al.*,

Petitioners

v.

STATE OF ALABAMA, *et al.*,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari

Respondents, Dr. Steven Hipp and Dr. Peggy Vives-Austin, respectfully submit this brief in opposition to the Petition for Writ of Certiorari filed by petitioners, Johnny H. Waters, et al.

REASONS FOR DENYING THE PETITION

1. The District Court's decision that the two year statute of limitations period of Ala. Code § 6-2-38*(l)* (Supp. 1992), applies to actions under 42 U.S.C.S. § 1983 (1986), was correct and the action was due to be dismissed. *Jones v. Preuit & Mauldin*, 876 F.2d 1480 (11th Cir. 1989).

2. The Eleventh Circuit's decision affirming this action of the District Court was correct. *Owens v. Okure*, 488 U.S. 235 (1989); *Jones v. Preuit & Mauldin*, supra.

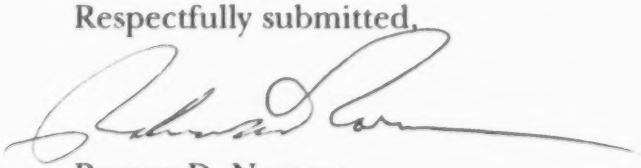
3. Petitioners continue to cite the case of *Beard v. Stephens*, 372 F.2d 685 (5th Cir. 1967), as a *1987* decision. Actually, this was a *1967* decision. Petitioners have had this error pointed out in the Eleventh Circuit but continue to erroneously argue that *Beard v. Stephens* is in conflict with *Owens v. Okure, Jones v. Preuit & Mauldin*, and Ala. Code § 6-2-38*(l)* (Supp. 1992).

4. Under Rule 10, Rules of the Supreme Court, there is no special or important reason set out for granting this petition for a writ of certiorari, such as a conflict with decisions of another court, and there is no question of federal law that has not been settled by this Court.

CONCLUSION

These respondents respectfully submit that the petition for writ of certiorari should be denied.

Respectfully submitted,



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July 23, 1993

Supreme Court, U.S.
FILED
JUL 28 1993
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No. 93-5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHNNY H. WATERS, ET AL.

Petitioners

versus

STATE OF ALABAMA

THE UNIVERSITY OF ALABAMA BIRMINGHAM MEDICAL CENTER, UNIVERSITY OF ALABAMA HOSPITALS, ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether Jeanne Carol Waters constitutional right to live and due process under the 5th and 14th Amendments to the U.S. Constitution were violated when a resident doctor, who had performed the same operation two times on patient/petitioner, and had her life support systems removed when he had no authorization from UAB Hospital or a court order after the patient/petitioner had been given drug Pavulon to induce unconsciousness?

II. Whether the civil rights [42 U.S.C. § 1983] were violated because of the constitutional rights of Jeanne Carol Waters were violated [5th and 14th Amendments to the U.S. Consitution and question of whether under 2-year or the 6-year statute of limitations because of trespass on the person as seen in the Alabama case [Beard v. Stevens, 372 F. 2d 685, (1967)] because Jeanne Carol Waters was assaulted and trespassed on her person by the

QUESTIONS PRESENTED (CONTINUED)

unauthorized pulling of her life support systems by resident doctors [doctors in training when she had been induced to be unconscious by a drug, Pavulon, causing her die [she lived approximately 2 hours after pulling life support system indicating she was not brain dead].

after she had been induced to be unconscious by a drug, Pavulon, causing her to die?

III. Whether a hospital can bury their mistakes and wrong doings by their agents, resident doctors [doctors in training] with legal technicalities that infringe upon the U.S. Constitutional rights of Jeanne Carol Waters by violating her civil rights when she had a right to live under the 5th and 14th Amendments to U.S. Constitution.

IV. Whether the instant case concerning the constitutional right to live is a first impression case and the Supreme Court of the United States has jurisdiction of the case and

QUESTIONS PRESENTED (CONTINUED)

can consider the merits of the case and rule as to the length of time this type of civil rights violation led to the premature and wrongful death of Jeanne Carol Waters, i.e. whether the 2-year statute or 6 year statute of limitations is applicable and when there is a life threatening civil rights violation whether this is a trespass on the person and comes under the 6-year statute of limitation or whether a procedural state law on statute of limitations can infringe on constitutional rights of the 5th and 14th amendments to the U.S. Constitution when the right to live and due process in the courts has been violated?

V. Whether the State of Alabama in failing to repsond to the state law on sovereign immunity exception of injury to the person being challenged should be considered as default and the instant case should be reversed and remanded because the State law

QUESTIONS PRESENTED (CONTINUED)

was challenged, and when a state law on sovereign immunity (in this case excception to sovereign) immunity because of trespass on person, impinges on the constitutional right to live under the 5th and 14th Amendments to U.S. Constitution then then the federal should prevail?

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No. 93-5

IN THE

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OCTOBER TERM, 1993

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below that was attached to the original Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision of the U.S. Court of Appeals, Eleventh Circuit, and from the Supreme Court of Alabama, the highest court in Alabama who originally denied the appeal. Jurisdiction is invoked under 28 U.S.C. § 1254 as Writ.

The constitutional issues were restated in the Complaint in the federal court and challenged Alabama law on sovereign immunity as well as other constitutional issues were mentioned below that are stated in this Reply Brief... and original Writ of Certiorari.

Attorney, Mr. Norman in writing his Brief in opposition to the Writ of Certiorari has not timely filed his brief and any statements by him should be stricken from the record. Further, Mr. Norman has no standing to argue against the constitutional issues when Mr. Norman failed to file any cross-appeal against the constitutional issues in the instant case with the U.S. Court of Appeals, 11th Circuit.

The instant case was docketed June 8, 1993, and the date in the brief of Mr. Norman is July 23, 1993, and is late according to Rule 15.2, Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The original case was timely filed on Jan. 2, 1991, when the Complaint was filed with Exhibits (Vol. I, p. 1-25).

In fact, Mr. Norman failed to defend the Respondents Hipp and Vives-Austin, who were resident doctors [doctors in training at UAB Hospital, Birmingham] in the state court.

The Counsel, Haydn M. Treschsel for UAB Hospitals in Birmingham et al. has waived any right to file a response to Petitioner's Petition for Writ of Certiorari in a letter dated July 20, 1993; the true defendants responsible are the UAB Hospital et al, because the direct trespass on the person which caused the death of Jeanne Carol

Waters was due to UAB resident doctor, Hipp who made the following statement in the medical records [which are in the record below] which stated,

4/2/89 0920 [time]

"D/C all meds, all drips, all labs. IVR at 50 cc /hr, VO Dr. Vives-Austin / T Taylor, RN" [D/C = discontinue].

[Signature] "Hipp"

i.e. Hipp [resident doctor in training] without authorization from staff doctor at UAB, and without proof of brain dead, and without court order after he had performed the same operation two times, did pull the life support systems from Jeanne Carol Waters who had the constitutional right to live under the 5th and 14th amendments [medical records were also filed in the federal court which substantiate all the facts presented in the original Petition for Certiorari and the facts are not "delusional"as falsely stated by Mr. Norman in his Opposition Brief on p. i.

Mr. Norman made further false statements concerning "the recitation of facts presented by pettioners is inaccurate and unacceptable... when facts are clearly stated in the records, particularly the medical records that filed in the court.

The original case was filed on January 2, 1991, and was timely filed in CV 91-0014. After the state court had ruled against Jeanne Carol Waters because of alleged sovereign immunity which should have been under the exception concerning personal injury, the federal case was filed on January 14, 1992, as a civil rights action which in the instant case is involved in trespass to the person which should be under the six-year statute of limitations. See Beard v. Stevens, 372 F. 2d 685 (5th Cir. 1967). The 1987 was a typographical error and has been corrected, and was not pointed out as falsely stated by Mr. Norman at the oral argument. The Supreme Court of the United States should consider the "right to live" of Jeanne Carol Waters

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who had no due process which was a violation of her 5th Amendment constitutional rights under the U.S. Constitution because Hipp [resident doctor] had no court order to remove the life support systems of Jeanne Carol Waters which he did and this unauthorized removal of the life support systems was the direct and proximate cause of her death. The federal law in the instant case should be reviewed again by this Honorable Court to determine if trespass to the person [unauthorized removal of life support systems causing death] comes under the two-year statutes of limitations or six-year statutes of limitations for civil rights actions. However, there is no doubt about it that Jeanne Carol Waters 5th and 14th amendments to the U.S. Constitution were violated when her life support systems were removed by a doctor in training. Also it is to be noted that the sovereign immunity law in the state of Alabama was also challenged in this instant case, but the state of Alabama did not respond.

The State of Alabama failed to defend concerning sovereign immunity in the instant case, and did not present oral argument below.

The Petitioner incorporates all the Statement of the Facts and the Statement of the Case from the original Petition for Writ for Certiorari. In fact, the entire Petition for Writ of Certiorari is incorporated into this Reply Brief...

STATEMENT OF THE FACTS

The Petitioner, Jeanne Carol Waters, had a right to live under the 5th and 14th Amendments to the U.S. Constitution, and when the resident doctors, Dr. Hipp and Dr. Austin-Vives pull the life support systems at UAB Hospital in Birmingham, without any authorization from the hospital or court order, the civil rights of Jeanne Carol Waters was violated under the 42 U.S.C. § 1983, especially since Jeanne Carol Waters had been induced to be unconsicious with the drug Pavulon.

Brief in Opposition to the Petition for Writ of Certiorari, p. i, since the allegations on malpractice and trespass to the person are not "mere delusions", and Constitutional issues were raised as will be seen by the briefs from the U.S. Court of Appeals, 11th Circuit, by the Appellant. THE THRESHOLD issue in this Honorable court is to determine if there is a two-year or six-year statute of limitations concerning trespass to the person in the state of Alabama, and whether there would be a 6-year statute of limitations concerning trespass to the person in civil rights cases in the state of Alabama because a person has a "right to live" especially when they can not make their own choice when Jeanne Carol Waters was unconscious because of being induced to be unconscious by the drug Pavulon.

Since Hipp [resident doctor] was willfully taking the life of Jeanne Carol Waters, it appears as stated below this is actually Murder I, and there is no statutes of

limitations for Wrongful death when there was no court order or authorization from the hospital or any real doctor such as a doctor on UAB Hospital staff, the Writ of Certiorari should be granted.

Mr. Norman only represented two defendants, and Mr. Trechsel represented the UAB Hospital defendants responsible and liable for the wrongful pulling of life support systems since Hipp and Vives-Austin [resident doctors in training] had failed to notify the staff doctors at UAB Hospital before these resident doctors, especially Hipp as he signed on p. 5 of this Reply Brief to "D/C [discontinue] all meds, all drips..." which was the direct and proximate cause of the wrongful death of Jeanne Carol Waters.

REASONS FOR WRIT OF CERTIORARI

The United States Constitutional issues were written in the briefs by the Appellant at the U.S. Court of Appeals, 11th Circuit. According to Code of Alabama, §6-2-34, trespass to person or liberty is listed under Six years of statutes of limitations. By Hipp [resident doctor] removing the life support systems of Jeanne Carol Waters after she had been induced to be unconscious by the drug Pavulon was a direct trespass on her person that was the direct cause of her wrongful death, and in other words is MURDER I, which has no statute of limitations. See definition of "direct force" in Cochran v. Hasty, 378 So. 2d 1131 (Ala. Civ. App. 1979). Also see the 1987 Code of Alabama, 1987 Supplement, which states on p. 20,

"Federal civil rights claim. The essential nature of a federal civil rights claim under

42 U.S.C.A. § 1983 fits the description of trespass under Alabama law; therefore, federal courts in Alabama will apply the six-year limitations..." The point is if there is any conflict of law since as described in the original Petition for Writ of Certiorari, then the Honorable Supreme Court of the United States should re-consider law concerning "direct force" causing death, when a person has a "right to live" under the 5th and 14th Amendments to the U.S. Constitution.

Recently since the original Petition for Writ of Certiorari was written and docketed June 8, 1993, the Supreme Court of Alabama has now ruled in the case Keel and Keel v. Banach, [Citations unknown since ruled July 16, 1993] that state law recognizes "Wrongful Birth" claims. It is quite clear that repsondent Hipp [resident doctor] did commit a trespass on the person of Jeanne Carol Waters and did cause the "Wrongful Death" since she did not die immediately

after the life support systems were pulled indicating that she was not brain dead at the time Respondent Hipp removed her life systems without authorization from the hospital and without authorization from any hospital staff doctors, and clearly Respondent Hipp was acting below standards of any doctor or hospital and did malpractice Jeanne Carol Waters before she died on or about 2 hours after the life support systems were removed which is substantiated in the medical records which are in the records below. Mr. Norman is clearly making false statements in contra-distinction to the medical records on p. i, Brief in Opposition to Petition for Certiorari.

Because of the taking of a life without authorization as Hipp [resident doctor] did by signing to have the life support systems removed is a violation of the 5th amendment rights to due process since he had no court order to discontinue the life support systems, which triggered action under 42 U.S.C. §1983. See

Wheeler v. City of Pleasant Grove, 833 F. 2d 267 (11th Cir., 1987), and the taking of the property right to life should be more important that just taking property rights.

Willful trespass on the person has a 6-year statutes of limitations, Code of Alabama, 1975, § 6-2-34, and trespass on the person in this instant case is the violation of Jeanne Carol Waters' constitutional right to live under the 5th and 14th Amendments to the U.S. Constitution Murder I has no statute of limitations, and the instant case should be reversed and remanded for trial by jury.

See Code of Alabama, 1975, § 6-2-34 on p. 42 under II. Trespass to person, states,

"**Willful or wanton injury deemed trespass** - An action against a defendent for a willful or wanton injury committed by the defendant himself is in trespass and is covered by the six-year statute of limitations. Doucet v. Middleton, 328 F. 2d 97 (5th Cir. 1964)."

The Petitioner incorporates all statements in the original "Writ of Certiorari" and the instant Reply Brief... is primarily repsonding to the attorney Mr. Norman's short brief which was not timely filed and should be stricken from the record.

Mr. Norman made further false statements concerning "the recitation of facts presented by pettioners is inaccurate and unacceptable... when facts are clearly stated in the records, particularly the medical records, filed in the court.

The Honorable Court should consider the "right to live" of Jeanne Carol Waters who had no due process which was a violation of her 5th Amendment constitutional rights under the U.S. Constitution because Hipp [resident doctor] had no court order to remove the life support systems of Jeanne Carol Waters which he did and this unauthorized removal of the life support systems was the direct and proximate cause of her death. The federal law in the instant case should be reviewed again

by this Honorable Court to determine if trespass to the person [unatuhorized removal of life support systems causing death] comes under the two-year statutes of limitations or six-year statutes of limitations for civil rights actions. However, there is no doubt about it that Jeanne Carol Waters 5th and 14th amendments to the U.S. Constitution were violated when her life support systems were removed by a doctor in training.

See Beard v. Stevens, 372 F. 2d 685 (1967), which states, "Alabama six-year statute applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations..."

This law in Beard case supra is in direct conflict with Owens v. Okure, 488 U.S. 235 (1988); Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989); and Code of Alabama § 6-2-38(1) (Supp. 1992), 2-year statute of limitations where state law infringes upon the constitutional rights of Jeanne Carol

Waters, right to live and due process under the 5th and 14th Amendments to the U.S. Constitution which triggers in the 42 U.S.C. § 1983 civil rights claim.

The Petitioner is respectively asking this Honorable court to review the Owens v.Okure supra case with the Beard v. Stevens case and determine if the trespass on the person applies in the instant case.

CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

Julia Asam

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July 28, 1993

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above was went to Hon. Jimmy Evans, Attorney General, State of Alabama, Montgomery, Alabama 36101, Mr. Robert D. Norman, Norman, Fitzpatrick et al, 1800 City Federal Building, Birmigham, Ala. 35203, and Mr. H.M. Trechsel, Office of Counsel, University of Alabama System, UAB Station, MJH, 112, Birmingham, Alabama 35294-2010 this 28 day of July 1993.

Julia Aram